



United States  
General Accounting Office  
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Office of the General Counsel

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January 16, 1997

The Honorable Alfonse M. D'Amato  
Chairman  
The Honorable Paul S. Sarbanes  
Ranking Minority Member  
Committee on Banking, Housing, and Urban Affairs  
United States Senate

The Honorable Jim Leach  
Chairman  
The Honorable Henry B. Gonzalez  
Ranking Minority Member  
Committee on Banking and Financial Services  
House of Representatives

Subject: Securities and Exchange Commission: Anti-manipulation Rules  
Concerning Securities Offerings

Pursuant to section 801(a)(2)(A) of title 5, United States Code, this is our report on a major rule promulgated by the Securities and Exchange Commission (SEC), entitled "Anti-manipulation Rules Concerning Securities Offerings" (RIN: 3235-AF54). We received the rule on December 23, 1996. It was published in the Federal Register as a final rule on January 3, 1997. 62 Fed. Reg. 519.

The final rule (Regulation M) governs the activities of underwriters, issuers, selling securityholders, and others in connection with offerings of securities. Regulation M is intended to preclude manipulative conduct by persons with an interest in the outcome of an offering. It significantly eases the regulatory burdens on offering participants by eliminating the trading restrictions for underwriters of actively-traded securities of large issuers, reducing the restricted periods for other securities, providing a more flexible framework for stabilizing transactions, expanding the securities eligible for Nasdaq passive market making during an offering, and deregulating rights offerings.

Enclosed is our assessment of the SEC's compliance with the procedural steps required by section 801(a)(1)(B)(i) through (iv) of title 5 with respect to the rule. Our review indicates that the SEC complied with the applicable requirements.

If you have any questions about this report, please contact James Vickers, Senior Attorney, at (202) 512-8210. The official responsible for GAO evaluation work relating to the Securities and Exchange Commission is James Bothwell, Director, Financial Institutions and Markets Issues. Mr. Bothwell can be reached at (202) 512-8678.

Robert P. Murphy  
General Counsel

Enclosure

cc: Jonathan G. Katz  
Secretary  
Securities and Exchange Commission

ANALYSIS UNDER 5 U.S.C. § 801(a)(1)(B)(i)-(iv) OF A MAJOR RULE  
ISSUED BY  
THE SECURITIES AND EXCHANGE COMMISSION  
ENTITLED  
"ANTI-MANIPULATION RULES CONCERNING SECURITIES OFFERINGS"  
(RIN: 3235-AF54)

(i) Cost-benefit analysis

The Securities and Exchange Commission (SEC) stated in its report to us that it was not required to prepare, and did not prepare, a cost-benefit analysis of the rule. Instead, pursuant to section 23 (a)(2) of the Securities Exchange Act of 1934, 15 U.S.C. § 78w(a)(2), the SEC is directed to consider the impact that the rule may have on competition.

The SEC believes that the benefits of the rule outweigh the costs attributed to it since it will significantly ease the regulatory burden by eliminating the trading restrictions for underwriters of actively-traded securities, reducing the restricted periods for other securities, provide a more flexible framework for stabilizing transactions, expanding the securities eligible for Nasdaq passive market making during an offering and deregulating rights offerings.

The SEC expects the rule will cause the costs associated with offerings to decrease significantly and also decrease the costs of distributions. Recordingkeeping requirements are estimated to cost \$2,500,000 annually for broker-dealers to comply with the rule.

(ii) Agency actions relevant to the Regulatory Flexibility Act, 5 U.S.C. §§ 603-605, 607 and 609

Section 603: Initial Regulatory Flexibility Analysis

In its Notice of Proposed Rulemaking (61 Fed. Reg. 17107, April 18, 1996), the SEC included a summary of its Initial Regulatory Flexibility Analysis. In accordance with sections 603(b)(1) and (2), the SEC describes the reasons for the proposed agency actions and its objectives and legal basis. In discussing various alternatives to the proposed rule, the SEC decided that, since small entities will benefit from the less restrictive nature of the rule, acceptance of any of the alternatives was not preferable to the rule as proposed.

## Section 604: Final Regulatory Flexibility Analysis

The SEC published a summary of its Final Regulatory Flexibility Analysis in the preamble to the final rule and provided our Office with a copy of the full text of the analysis. The analysis provides a statement of the need for and the objective of the rule and the fact that there were no comments received with respect to the Initial Regulatory Flexibility Analysis.

The analysis discusses the definitions of "small entities" for the various entities subject to the rule which definitions were adopted by the SEC in Securities Exchange Release No. 18452, dated January 28, 1982. While no firm estimate of the number of small entities subject to various provisions of the rule is given, the overall effect of the rule for small entities will be beneficial through a shorter cooling-off period and increased eligibility for passive market making.

The analysis also addresses the various alternatives to the final rule which were considered, including differing compliance or reporting requirements, use of performance rather than design standards, and an exemption for small entities from coverage of the rule. These alternatives were rejected because the burden of compliance was not that great for small entities or because of the need for investor protection.

### (iii) Agency actions relevant to sections 202-205 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. §§ 1532-1535

As an independent regulatory agency, the Securities and Exchange Commission is not subject to title II of the Unfunded Mandates Reform Act of 1995.

### (iv) Other relevant information or requirements under Acts and Executive orders

Administrative Procedure Act, 5 U.S.C. §§ 551 et seq.

The rule was promulgated using the notice and comment procedures of 5 U.S.C. § 553. A Notice of Proposed Rulemaking was published in the Federal Register on April 18, 1996 (61 Fed. Reg. 17107) and comments were requested to be submitted by June 17, 1996.

The SEC received 39 comments and in the preamble to the final rule discusses the comments received and the modifications made to the proposed rule as a result of the comments.

Paperwork Reduction Act, 44 U.S.C. §§ 3501-3520

The final rule contains information collections which are subject to the Paperwork Reduction Act and review by the Office of Management and Budget.

The preamble to the proposed rule contained an explanation of the need for the information, the burden estimates related to each portion of the rule, and requested comments be submitted to both the SEC and OMB regarding the information collections. Following receipt of comments, some of which challenged the burden estimates contained in the proposed rule but none of which contained alternatives to the SEC's estimates, the SEC reviewed its estimates and retained the estimates set forth in the proposed rule.

OMB approved the information collections and issued control numbers 3235-0464, -0465, -0466, -0467, -0201, -0418, and -0071 for the requirements.

Statutory authorization for the rule

Regulation M is adopted under the Securities Act, 15 U.S.C. § 77a et seq., particularly Sections 7, 17(a), 19(a), 15 U.S.C. §§ 77g, 77q(a), and 77s(a); the Exchange Act, 15 U.S.C. § 78a et seq., particularly Sections 2, 3, 9(a), 10, 11A(c), 12, 13, 14, 15(c), 15(g), 17(a), 23(a), and 30, 15 U.S.C. §§ 78b, 78c, 78i(a), 78(j), 78k-1(c), 78l, 78m, 78n, 78o(g), 78q(a), 78w(a) and 78dd-1; and the Investment Company Act, 15 U.S.C. § 80a-1 et seq., particularly Sections 23, 30, and 38, 15 U.S.C. §§ 80a-23, 80a-29, and 80a-37.

Executive Order No. 12866

The rule, promulgated by an independent regulatory agency, is not subject to the review requirements of Executive Order No. 12866.

The SEC did not identify any other statutes or executive orders imposing requirements relevant to the rule.